

# **THE STRUCTURAL PEST CONTROL BOARD**

## **JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE REPORT TO THE CALIFORNIA LEGISLATURE**

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**Board Overview, Issues, Findings  
and Recommendations**

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**Prepared by:  
Joint Legislative Sunset Review Committee**

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# **JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE**

**Senator Leroy Greene**  
Chairman

## **Senate Members**

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Senator Richard Polanco

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Assemblymember Susan Davis (VC)  
Assemblymember Elaine Alquist  
Assemblymember Bill Campbell

## **Staff**

Bill Gage  
Consultant

## **Staff Assistance Provided By:**

Jay DeFuria  
Consultant  
Senate Business and Professions Committee

G.V. Ayers  
Consultant  
Senate Business and Professions Committee

Michael Abbott  
Consultant  
Senate Business and Professions Committee

Sailaja Cherukuri  
Analyst  
Legislative Analyst Office

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# 1.

## OVERVIEW OF THE CURRENT REGULATORY PROGRAM

### BACKGROUND AND DESCRIPTION OF THE BOARD

The Structural Pest Control Act provides for the licensing and regulation of structural pest control operators, field representatives, and applicators and the registration of structural pest control companies by the Structural Pest Control Board (SPCB or board) of the Department of Consumer Affairs (DCA). The SPCB was created by the California Legislature in 1935. Prior to that time structural pest control was regulated by the Contractors State License Board.

By application and examination, structural pest control operators and field representatives may be licensed in as many as four of the specified areas of pest control listed below. Applicators may be licensed in all areas except Branch 1. All companies and their branch offices must be registered by the SPCB.

**Branch 1** – Fumigation. The control of household and wood destroying pests or organisms by fumigation with poisonous or lethal gases.

**Branch 2** – General pest. The control of household pests, but excludes fumigation.

**Branch 3** – Termite. The control of wood destroying pests or organisms by use of insecticides, or structural repairs and corrections, excluding fumigation.

**Wood Roof Cleaning and Treatment** – The inspection for wood destroying organisms, cleaning, and application of wood preservatives to wood shake or shingle roofs.

The board is presently composed of seven (7) members, of which four (4) are public members and three (3) are professional members. The four professional members are appointed by the Governor. Two (2) public members are also Governor's appointments. One public member is appointed by the Senate Rules Committee and the other by the Assembly Speaker. Currently there are no vacancies on the board. All professional members must be licensed in California and active practitioners during the prior five years.

## **RECENT LEGISLATIVE HISTORY**

The apparent unwillingness of the SPCB to address widespread abuses in the structural pest control industry led to the Legislature approving and the Governor signing control language relative to the board's budget in the 1995 Budget Act. The control language required the SPCB to act to: restrain licensees from requiring unneeded repair work; establish standards for removing damaged wood; allow the consumer to independently contract for work which the licensee would otherwise subcontract out; adopt cite and fine regulations.

AB 910 (Speier, Chapter 381, Statutes of 1995) was the budget trailer bill to implement several statutory changes called for in the budget act. In October of 1995, the industry association, Pest Control Operators of California (PCOC), filed suit in federal court seeking an injunction against the pest control provisions of AB 910, arguing that the bill made unconstitutional and unfair requirements on registered companies. After eventually dropping the suit, the PCOC entered into negotiations with DCA, SPCB and legislative representatives to arrive at amenable compromise language. Those changes were made in SB 1546 (Lewis, Chapter 398, Statutes of 1996).

AB 3473 (Morrissey, Chapter 829, Statutes of 1996) prohibited licensees from recommending or performing corrective work in excess of that required to fix the problem, and authorized the SPCB to deny license renewal or other necessary services to those who do not pay their fines for violations.

## **REGULATORY DUPLICATION / FEDERAL AND STATE REQUIREMENTS**

In 1984, AB 294 (Chapter 766) established the SPCB as the only regulating authority for structural pest control. The measure also provided for a contractual relationship between the SPCB and the California Department of Food and Agriculture, later the Department of Pesticide Regulation (DPR), to act as the board's enforcement agent of pesticide regulation. This contractual relationship is maintained today through a memorandum of understanding.

There are currently other licenses which parallel but do not fall under the jurisdiction of the board. These would be licenses issued by the DPR related to agricultural pesticide use, mosquito abatement, lawn fertilization and weed control. For example, an individual may hold a license to apply pesticides in agriculture from the DPR and also hold a license with the SPCB to apply household pesticides. According to the board, there is little overlap, if any, in regulation relative to dual licensing. The board is currently working with the DPR to generate compatible enforcement policies.

Further, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) regulates the use, handling and storage of pesticides through the Environmental Protection Agency (EPA). The SPCB states that California standards not only meet, but are more stringent than are those contained in FIFRA.

LICENSING DATA	FY 1992/93	FY 1993/94	FY 1994/95	FY 1995/96
<b>Total Licensees</b> (renewed every 3 years)	10,794	11,813	13,198	14,738
<b>Operator</b>				
License	168	119	132	125
Renewal	849	327	636	763
<b>Field Representative</b> Examinations				
License	1348	1480	1323	1258
Renewal	1816	1545	1571	1626
<b>Applicator</b> Examinations				
License	n/a **	n/a **	906	2143
Renewal	n/a **	n/a **	0	0
Applications (all licenses)	5,805	5,943	9,979	9,963
Licenses Issued (all licenses)	1,516	1,599	2,361	3,526
Renewals Issued (all licenses)	2,665	1,872	2,207	2,389
Statement of Issues Filed	2	4	0	8
Licenses Denied	10	8	20	5

\* Prior to 1995, applicators were not licensed but certified

## BUDGET AND STAFF

The main sources of revenue for the SPCB is generated through the stamp fees. The law requires that a stamp must be attached to each pest control inspection report and each notice of work completed submitted to the board. Stamp fees for fiscal year 1996/97 are projected to be \$2.3 million. Examination and licensing fees account for an additional \$180,000. The stamp fees support the enforcement program.

The board's projected expenditures for fiscal year 1996/97 are about \$3 million. Anticipated revenues are about \$2.8 million. The board's reserve is about \$2.8 million. As of June 30, 1997, the board expects a reserve of about \$2,542,386, or 83% of its total budget. The board does not expect an increase in fees in the next two fiscal years. In contrast, the stamp fees are to be reduced in 1997 from \$2 to \$1.50. The board anticipates that the reduction will reduce the reserves to a three or four month level by the year 2000.

For fiscal year 1995/96, the board will spend \$1,090,944 million on the administration of its examinations and licensing or 39% of its total budget. The board expects to spend \$1,709,050 on enforcement, or 61% of its total budget. Other boards spend on average about 7% of their budget on examinations and 66% on enforcement.

The board has 32 staff and 27.5 authorized positions for 1995/96. In addition, the board is scheduled to add three more specialists (inspectors) in FY 1996/97 to better respond to consumer complaints and adopt a more pro-active stance relative to enforcement. The enforcement unit has a staff of 13 people.

## FEES

The board's license is good for three years. The board's current fee structure is as follows:

Fee Schedule	Current Fee	Statutory Limit
<b>Operator</b>		
Examination	\$25	\$25
License & Renewal	\$150	\$150
<b>Field Representative</b>		
Examination	\$10	\$15
License & Renewal	\$30	\$45
<b>Applicator</b>		
Examination	\$15 **	\$15
License & Renewal	\$ **	\$50
<b>Company Registration</b>		
Branch Office Registration	\$120	\$120
	\$60	\$60
<b>Stamp Fees</b>		
Pesticide Use Report Stamp	\$6	\$7
Inspection Report	\$2 *	\$3
Notice of Work Completed	\$2 *	\$3

\* These stamp fees will be reduced to \$1.50 January 1, 1997

\*\* One fee covers both examination and licensing for applicators.

## OTHER FUNDS ADMINISTERED BY THE BOARD

In addition to the Structural Pest Control Fund, the SPCB's normal operating fund, the board also administers two other special funds – the Structural Pest Education and Enforcement Fund, and the Structural Pest Control Research Fund.

**Structural Pest Control Research Fund.** This fund is supported by a fee of two dollars (\$2) out of the six dollar fee for each pesticide stamp purchased from the board by licensees. The fund is administered by the board's Research Advisory Panel which was created by statute. The fund is designed to pay for research into pest control methods. Current reserves are estimated at \$250,000.

**Education and Enforcement Fund.** This fund pays for the interagency agreement with the Department of Pesticide Regulation (DPR) to perform pesticide investigations. The DPR in turn contracts with county agricultural commissioners to carry out the inspections. California requires the filing of pesticide use reports on a county by county basis. The county agricultural commissioners in California currently act as agents of the board for pesticide enforcement purposes. This fund Pays counties for the examination process for applicators. Current reserves are estimated at \$126,000.

## LICENSING REQUIREMENTS

All states regulate pest control in some fashion, however, the practice is regulated in a variety of ways. Some states require licensing, others require certification and registration, while other states require even less. To the board's knowledge no state has deregulated the pest control industry. There are a variety of regulatory structures for pest control throughout the nation. Some states regulate through an agency such as a Department of Agriculture, others have agencies with joint jurisdictions.

The board licenses three separate categories: operator, field representative, and applicator. These categories represent three levels of responsibility. The *operator* is the licensee that has gained years of experience and knowledge in the field and is authorized to guide and direct the activities of those just entering the profession. The *field representative* category allows for the employee, under an operator's direct supervision, to gain those skills necessary to safely carry out structural pest control. *Applicators*, a limited scope category, are employees of registered companies who apply pesticides after the more knowledgeable and trained employee (field representative or operator) has made an identification and prescribed a treatment program.



The Structural Pest Control Act specifies no minimum licensing qualifications. However, worker safety laws require that an individual must be 18 years of age. Specific licensing requirements are:

**Applicator license.** An applicant must pass an examination which demonstrates sufficient knowledge of pest control in the Branch applied for.

**Field Representative license.** An applicant must submit proof of training and training and experience in the Branch applied for and pass an examination.

**Operator license.** An applicant must have two years experience for Branches 1 and 2, and wood roof cleaning and treatment, and four years for Branch 3. Additionally, the applicant must have been licensed for at least one year as a field representative – two years for Branch 3. Additionally, the applicant must pass an examination.

The board administers a state examination for every licensing category in each branch (11 total); there is not a national examination.

- The licensing examinations are developed from a bank of examination questions originally developed and validated by a contract entomologist consultant. The bank of questions are continually updated to reflect changes in the industry and the various laws and regulations. The examination questions are reviewed by the SPCB's Examination Committee approximately every five years and was last validated in 1994.
- Examinations are administered each month (with 500–1,000 applicants) in Sacramento and Riverside. Staff from the Licensing and Examination Unit are responsible for grading the examinations. A candidate who fails the examination must repeat the entire examination.
- The board has entered into a memorandum of understanding with 44 of the 58 counties in California to administer the applicator's license examination.

The board states that there has been a great deal of concern over the low passage rate for both field representatives and operators. Part of it may be attributed to the fact that apparently many applicants who simply do not study. They continue to take the exam over and over until they pass.

Examinations	92/93	93/94	94/95	95/96
Field Representative Examinees	4,193	4,410	5,207	5,297
Passage Rate	42%	42%	36%	36%
Operator Examinees	637	499	579	584
Passage Rate	32%	31%	28%	28%
Applicator Examinees	3,144	3,181	2,382	2,837
Passage Rate	78%	76%	83%	94%

California does not does not recognize international reciprocity. Out-of-state licensees must demonstrate experience equivalent to this state's requirements before sitting for an examination.

The board states that under its own review, it has become clear that the licensing and the examination program needs to be reviewed. The board plans to use the DCA's Office of Examination Resources (OER) to conduct an occupational analysis of the industry as a first step in reviewing the entire licensing, exam, and continuing education process.

## **CONTINUING EDUCATION/COMPETENCY REQUIREMENTS**

Since 1981, there is a statutory requirement that pest control operators and field representatives and applicators participate in continuing education (CE) as a condition for license renewal. Copies of CE certificates of completion must accompany licensee renewal fees.

Individuals licensed in one Branch must gain 16 hours of CE. Each licensee must complete eight hours of continuing education in rules and regulations; four hours of technical classes in each Branch licensed; and four hours in classes of the licensees choice. Those licensed in two Branches must gain 20 hours of CE. Each additional Branch license requires four additional hours of CE.

Licensees who do not wish to take CE or have not completed the requirements, have the option of taking the Continuing Education Challenge Examination. The licensee may take the examination one time, and must pass each Branch examination by 70%.

CE is provided through 220 different board approved providers. Primary providers of CE are chemical companies and distributors. Many larger pest control companies also provide CE to their employees. The major correspondence course provider is the University of California, Berkeley. The SPCB has one full-time staff person who reviews and processes all CE documentation.

## **REPORT FILING**

A major activity of the SPCB is the receipt and filing of some 8,000 documents each day. The documents are the *inspection report* (wood destroying pests in a structure), and the *notice of work completed* (when repairs identified in an Inspection Report are completed). California is unique in that it requires wood destroying reports for every inspection. This activity, required by law, puts the SPCB in a unique role for a regulatory agency – receiving and maintaining on behalf of the industry, non-licensing, consumer documents. The board states that the report filing is an important regulatory function in the protection of consumers.

For the past three years the board has been working toward updating its microfilm system with a new imaging storage system to enhance the board's ability to store and retrieve inspection reports. The new imaging system will soon be installed. In selecting the system, consideration was given to eventually being able to allow registered companies to electronically file reports. The board states that currently reports are mailed to the board for processing, however, many benefits could be found in licensees being able to file reports directly by computer.

## **ENFORCEMENT ACTIVITY**

Complaints are investigated by the board's specialists (investigators). The board states that the enforcement unit is effective but because of the heavy workload the board has not been able to be pro-active in its enforcement activities. To address the issue, three new specialists (inspectors) have been added, bringing the statewide total from five to eight. The board intends for each specialists to make at least two office records checks per week. This would provide for more than 800 office records checks a year.

Complaint cases are prioritized according to the danger to persons and property. If there is a case where chemical misapplication has occurred, this would be classified as the highest priority. This would require immediate investigation by either a board specialist or by the staff of the local county agricultural commissioner as an agent of the board. The Division of Investigation (DOI) investigates all unlicensed activity.

<b>ENFORCEMENT DATA</b>	<b>FY 1992/93</b>	<b>FY 1993/94</b>	<b>FY 1994/95</b>	<b>FY 1995/96</b>
Inquiries *	Total: –	Total: –	Total: –	Total: 18,644
Complaints Received (By Source)	Total: 1,160	Total: 1,987	Total: 1,110	Total: 987
Complaints Closed (By Type)	Total: 953	Total: 995	Total: 1,034	Total: 1,110
Unlicensed Practice	56	64	56	91
Contractual	255	257	259	476
Fraud	3	0	0	2
Competence/Negligence	224	245	292	319
Unprofessional Conduct	0	0	0	0
Other	415	429	427	222
Accusations Filed	Total: 40	Total: 44	Total: 60	Total: 42
Contractual	11	9	14	15
Fraud	6	8	13	4
Health & Safety	5	5	4	7
Unlicensed	7	9	14	8
Criminal	4	4	13	1
Failed Probation	7	9	2	7
Investigations Opened	Total: 370	Total: 457	Total: 428	Total: 354
Office Records Check	n/a	104	69	71
* Prior to 1996, inquiry data was not kept				

## COMPLAINT DISCLOSURE POLICY

Once an accusation has been filed with the Attorney General (AG), the board will provide copies of the accusation and any amended or supplemental accusations to the public. However, the board provides the public with appropriate cautionary language that a final determination of wrong doing by the licensee has not been concluded. And lastly, any final decision or stipulation and petitions for reconsideration will be provided upon request.

All public information relative to a licensee's record is made available to the public upon request. This includes education and training information as well as employment history. Certified copies of these records (often requested by consumers or their attorneys) are provided for a nominal fee.

## COST RECOVERY AND RESTITUTION TO CONSUMERS

Cost recovery to the board and restitution to the consumer are used as terms of probation and are also imposed by the Administrative Law Judge (ALJ) where they are supported by the findings. If the restitution or recovery is ordered but not paid, the board will not end probation and will remand the case back to the AG. Restitution is one of the areas looked upon as rehabilitation when license reinstatement is sought.

The board can order restitution by ordering the violator to bring the property into compliance or the ALJ can do so through the administrative process. However, it must be noted that the board was under the impression that it did not have the power to order restitution. However, at the board's request an AG's opinion clarified that the SPCB did indeed have the authority to order restitution. Restitution is now being enforced.

<b>COST RECOVERY</b>	<b>FY 1992/93</b>	<b>FY 1993/94</b>	<b>FY 1994/95</b>	<b>FY 1995/96</b>
Requested	n/a	n/a	n/a	n/a
Received	\$2,270	\$291	\$657	\$6,578

## **CONSUMER OUTREACH AND EDUCATION**

The board states that it does not target high priority cases simply for the sake of publicity. However, if a case does become high priority the board will use the case to educate the consuming public and to “send a message” to those in the industry who may be involved in the same type of violations.

## 2.

### IDENTIFIED ISSUES AND FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

**ISSUE #1.** Should the licensing of structural pest control operators, field representatives and applicators be continued?

**Recommendation:** *The State should continue to license structural pest control operators, field representatives and applicators.*

**Comment:** The unlicensed practice of this occupation could pose serious risk to the consumers' life, health and safety. All states regulate pest control in some fashion. No states have deregulated the pest control industry.

**ISSUE #2.** Should the Structural Pest Control Board be continued?

**Recommendation:** *The Structural Pest Control Board should continue to be the agency responsible for regulating the practice of pest control. Legislation should be enacted to continue the Board and require a subsequent sunset review in three years.*

**Comment:** Although there was an apparent unwillingness of the Board to address widespread abuses in the structural pest control industry, there were several legislative changes in 1995 to rectify some of these problems. Since that time the Board has made some strides in regulating to protect the consumer. However, this Board should be reviewed once again in three years to assure that it is carrying out its legislative mandates and legal responsibilities, and is operating in the best interests of the consumer.

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**ISSUE #3. Should the composition of the Board be changed?**

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**Recommendation:**            *No change.*

**Comment:** The Board is a public majority board with a total of seven (7) members: four (4) public and three (3) professional. Other states have included representatives from agencies involved in regulating the use of pesticides. However, the public majority should be maintained and the Board could establish an advisory committee composed of representatives from other related agencies if necessary.

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**ISSUE #4. Should the legislative intent of the Board be clarified so that its primary mission is to protect the consumer.**

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**Recommendation:**            *Legislative findings and intent should be included in the Structural Pest Control Board Act to clarify that its primary mission is consumer protection.*

**Comment:** The Board's current mission statement points to an *industry* rather than a *consumer* orientation. The mission statement makes "ensuring consumer protection" a means to attain a "fair and competitive marketplace." These priorities should be reversed.

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**ISSUE #5. Should an occupational analysis be performed on the licensing examinations for pest control operators and field representatives to assess the minimum competency necessary to practice in this profession?**

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**Recommendation:**            *The Board should conduct an occupational analysis of the industry to assure the exam's validity and relevance to risks faced by consumers. The Board should also have its examinations evaluated and validated by DCA's Office of Examination Resources. This review process should be initiated as soon as possible.*

**Comment:** There has been a great deal of concern over the low passage rates for the Board's examinations. In 1995/96, the passage rate for operators was 28%, while the passage rate for field representatives was 36%. The Board may be testing for more than minimum competency needed to practice in this profession. It has been argued that the examination does not test for the appropriate skills, knowledge and abilities needed to work within this field, and that questions are irrelevant to the practice of pest control. The Board is recommending an occupational analysis of its examination be conducted.

**ISSUE #6. Should the current requirement that all pest control businesses file with the Board all inspection reports and notices of work, and that they be affixed with a stamp issued by the Board, be eliminated?**

**Recommendation:** *Pest control businesses should not be required to file daily inspection reports and notices of work with the Board. An alternative method should be found to the filing of these numerous documents with the Board. A plan to eliminate the requirement of filing these documents should be prepared by DCA, the Joint Committee and the Board, and submitted to LAO, Department of Finance and the respective Budget Committees by October 1, 1998. The implementation of this fiscal plan should be completed by budget year 1999/00.*

**Comment:** The Board receives and files some 8,000 documents from pest control businesses each day. (Over a million documents per year.) California is unique in mandating the filing of reports for every inspection. There is no indication that filing these reports has assisted the Board in detecting enforcement problems, or in the disciplining of operators. It does, however, provide a means to generate a large percentage of the Board's revenue, approximately 86%, since every document filed requires a stamp which must be purchased from the Board. The Board and DCA should work with the Joint Committee in attempting to find some other alternative method to the filing of inspection reports and notices of work completed with the Board.



**ISSUE #7. Should the Board monitor the amount of corrective work recommended in termite inspection reports and performed on residential structures by licensees?**

**Recommendation:** *The Board should closely monitor the amount of corrective work recommended by licensees for home repair work to assure that it is directly related to problems identified during the inspection of these residential structures. The Board should report to the Joint Committee by October 1, 1998 on any abuses which have occurred.*

**Comment:** The sale or refinancing of residential property may depend upon the recommendations made in the structural pest inspection report. Companies making the inspections may also perform the repairs. Licensees performing the inspections receive a commission for the amount of repairs recommended in the report. A recent change in the law prohibits licensees from recommending or performing corrective work in excess of that required to fix the problem. However, this area still has great potential for abuse by unscrupulous licensees.

**ISSUE #8. Should the Board be allowed to contract directly with county agricultural commissioners rather than through the Department of Pesticide Regulation (DPR) for pesticide enforcement purposes?**

**Recommendation:** *The Board should be granted statutory authority to contract directly with county agricultural commissioners.*

**Comment:** There is currently a memorandum of understanding with DPR to act as the Board's enforcement agent of pesticide regulation. However, DPR in turn contracts with the county agricultural commissioners (and their staff) to carry out inspections and investigations dealing with the use of pesticides. It would appear as if substantial savings could be found if the Board were granted authority to contract directly with county agricultural commissioners.

**ISSUE #9. Should the Board increase the amount of unannounced office records checks of pest control businesses?**

**Staff Recommendation:** *While resources should not be diverted from other enforcement activities, the Board should attempt to expand this program.*

**Comment:** The Board initiated the “Office Records Check” program in 1985/86, to assure that pest control firms keep proper records, disclose required information to consumers, and follow all applicable rules and regulations. However, the Board claims that budgetary constraints and workload demand have prevented them from being proactive in this area. If the filing of inspection reports and work completed documents is discontinued, this program should be expanded.